

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Lazarus McKinnes, Jr.,

Plaintiff,

v.

Case No. 1:13cv473

Tyler Pettigrew,

Judge Michael R. Barrett

Defendant.

ORDER

This matter is before the Court on the Report and Recommendation filed by the Magistrate Judge on April 7, 2014 (Doc. 15).

Proper notice has been given to the parties under 28 U.S.C. § 636(b)(1)(C), including notice that the parties would waive further appeal if they failed to file objections to the Report and Recommendation (Doc. 15) in a timely manner. *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The Court notes, however, that though such notice was served upon Defendant, the certified mail receipt was not returned. Upon review of the record, the Defendant seemingly has received all of the Court's filings without having any issue. Because the Recommendation (Doc. 15) was mailed to the last known address, it was properly served, and party waived right to appellate review. See also *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) (A *pro se* litigant has an affirmative duty to diligently pursue the prosecution of his cause of action); *Barber v. Runyon*, No. 93-6318, 1994 WL 163765, at *1 (6th Cir. May 2, 1994) (A *pro se* litigant has a duty to supply the court with notice of any and all changes in his address).

Since, no objections to the Magistrate Judge's Report and Recommendation

(Doc. 15) have been filed, it is **ORDERED** that it be hereby **ADOPTED**. **Defendant's Motion to Dismiss (Doc. 11) is GRANTED.**

An appeal of this order would not be taken in good faith and any leave to appeal *in forma pauperis* would be denied. Plaintiff is free to seek an *in forma pauperis* appeal in the Sixth Circuit Court of Appeals consistent with the Recommendation (Doc. 15) of the Magistrate Judge.

IT IS SO ORDERED.

s/Michael R. Barrett
Michael R. Barrett
United States District Judge